

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD1298/2009
MN1289/2009
WT577/2009

against

EMPLOYER - first respondent

and

EMPLOYER - second respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. P. Casey
Ms. H. Kelleher

heard these claims in Cork on 24 June 2010

Representation:

Claimant(s):
Ms. Philomena Murnane BL instructed by

Mr. David O'Mahony, Eamon Murray & Co, Solicitors,
6/7 Sheares Street,
Cork

Second Respondent:
Ms. Elaine Burke, J.W. O'Donovan Solicitors,
53 South Mall,
Cork

The determination of the Tribunal was as follows:-

The claim

The claimant, an architect, alleged that he had been unfairly dismissed from an employment which commenced on 28 February 2005 and ended on 19 December 2008. His case was that he had raised grievances with his employer which the employer failed to properly determine. It was alleged that the employer undermined the claimant in his position as associate director for months before his employment was unfairly terminated. The employer terminated the claimant's employment the week before Christmas 2008 allegedly without any proper notice to the claimant thereby causing the maximum possible grief and upset to the claimant and his family. The claimant did not accept that the termination of his employment by his employer constituted a valid redundancy and he did not accept the redundancy payment that the employer had sought to make to him.

The defence

It was stated on behalf of the Irish-registered company (hereafter referred to as IRC) that the claimant's case would be disputed but that, as IRC was now in liquidation, the matter should be taken up with the liquidator. The defence further stated that the claimant had raised a grievance against a number of employees at IRC "which was dealt with and a decision issued 28.08.08". The employee appealed against the decision. The appeal was "upheld following a hearing 23.10.08, the decision being issued 14.11.08". It was stated that IRC "therefore refute any wrongdoing with regard to this claim" but that "sadly during the above process" it was "forced to implement a redundancy programme leading to a reduction of 50% of the staff

The written defence noted that the claimant "fell into the group of people potentially made redundant". Ultimately IRC was "forced to complete the redundancy process started in October". The claimant was given his redundancy notice prior to Christmas and was paid in lieu of his notice period. He was also paid his outstanding holiday entitlement as well as his redundancy payment. The claimant cashed all cheques except for the redundancy payment. IRC assumed his acceptance of notice and redundancy because cheques for his notice and holiday entitlements had been cashed.

Determination:

The claim lodged under the Minimum Notice and Terms of Employment, 1973 to 2005, falls for want of prosecution.

The claim lodged under the Organisation of Working Time Act, 1997, falls for want of prosecution.

Regarding the claim lodged under the Unfair Dismissals Acts, 1977 to 2007, it is noted that other employees were made redundant and that the claimant himself might have been redundant some seven months after the termination of his employment. However, on the balance of probabilities, from the evidence adduced, the Tribunal deems the claimant's termination to have been an unfair dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 2007. It was felt that there was an orchestrated attempt to get rid of the claimant who was not very difficult to destabilise. It was felt that the second-named respondent (which is the Irish-registered company now in liquidation

and heretofore referred to as IRC) had wanted the claimant to resign and that procedures had not been fully followed.

Therefore, the Tribunal allows the claim lodged under the Unfair Dismissals Acts, 1977 to 2007. In all the circumstance of this case, the Tribunal deems it just and equitable to order that the second-named respondent pay the claimant compensation in the amount of €51,922.80 (this amount being equivalent to thirty weeks' gross pay at €1730.76) under the said legislation.

Given that the said second-named respondent is in liquidation, it should be noted that any payment which is made from state funds is subject to a statutory ceiling of €600.00 gross per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)